

---

# INFORMATION

*For the Lady Craigleith, and Laird of Prestoungrange, at first presented against Sir James Rothead, and now repeated against James Rothead his Son, with an Addition for the Laird of Mortounhall, humbly offered to the Members of the Committee for Security.*

**T**He deceast *John Rothead* of *Craigleith*, eldest Brother to the said *Sir James*, in his Contract of Marriage with *Kathrine Trotter* his Lady, is obliged to provide his Lands to his Heirs whatsoever, and coming to dy about *November 1673*. years, he leaves only one Child, a Daughter of the Marriage, whom in his Testament he names his Executrix and universal Legatrix, and leaves to his Lady 6000. *merks* of Legacy: and farther appoints her sole Tutrix to his said Daughter, recommending the Care and Education of her very particularly and earnestly.

And farther, there is a Clause interlined in the Testament, whereby he ordains his Daughter to match with his said Brothers eldest Son, if it shall please the Lord to spare her, the Daughter being about that time scarce nine years of Age, and *Sir James* his eldest Son about three years younger.

After the Fathers Decease, the Lady *Craigleith* as sole Tutrix takes upon her the Care and Education of her Daughter, and performs it with all Tenderness, and when her Daughter grows up to almost twelve years of Age, thinks how she may be disposed upon for her best Advantage, but *Sir James* laying hold upon the Recommendation in his Brothers Testament, touching his Daughters Marriage with his Son to make all sure, Impetrats from the Privy Council, a Warrant for sequestrating the Daughter in the Family of the Bishop of *Edinburgh*, without ever calling or hearing the Mother sole Tutrix, or any other Party concerned, which Warrant being evidently very summar and undoubtedly Impetrat by the great Moyan *Sir James*, then had with some principal persons in the Council, and the effect of it being to pull an only Daughter out of her Mothers Arms, to whom her Father had so earnestly recommended her, and to expose her to the will and pleasure of *Sir James*. her next Heir appearand, the Lady did not think her self obliged to comply with it, besides the Surprise of it was so amazing to her young Daughter, that she cryed most bitterly and hung about her Mothers Neck, when the Intimation of the Order was made to her, crying out that she should not leave her Mother, nor ever marry *Sir James*'s Son, and so slipt out of her Mothers House; and her Mother observing her Daughters Aversion, & many other things not proper her to be commemorate, and in a word being desirout to dispose upon her Daughter, as both the ill Consequences of a constrained and unpromising Marriage might be evited, and the Fathers Recommendation far more effectually satisfied, makes up and concludes the Marriage betwixt her Daughter and *Prestoun-Grange* now her Husband.



Husband, whom all must now grant to have been a most proper and advantageous Choice.

But there being a necessity to have the Marriage privately celebrated, because of Sir *James* his Power and Influence for the time, the Parties go to the *Border* and are there married by a Non-conform Minister, whereas Sir *James Storming* highly conceives, not only the Lady *Craigleith* with her Daughter, and *Prestoun Grange* her Husband, but also *Henry Trotter* of *Mortoun-hall*, and *Prestoun-Grange* elder: and libelling them before the Council upon an Act of Council made in the year 1668. whereby it is declared, that such as take away any young Gentlewoman within Age contrary to the Councils Commands should be should be punished as they should think fit: and that such as contract Marriage with them should be punished by Fines equivalent to their Tocher. and upon the Councils foresaid Order for Sequestration, and likewise making mention of the Fathers Testament and Recommendation, & that it was by his procurement that the 6000 *merks* of Legacy was left to the Mother, and yet she, and her Complices had sent her away to the Border to be married there to *Prestoun-grange*, by an outed Minister, to the high Contempt as he alledged of Authority, he obtained the Lady to be Fyned in no less than 6500 *merks*, and the rest in 3500 *merks*, and 9000 *merks* to be given to himself, for his pretended Damages, beside the Legal Fine of 1000 *merks* imposed upon *Prestoun-grange*, for his clandestine Marriage, and accordingly all these Fines were payed.

But it being declared by the Claim of Right, that extraordinary Fines are contrary to Law, the Lady *Craigleith* hath now appealed to the Parliament, and obtained a Reference to the Commission for Fines and Forefaultures, to have the same there tryed and examined, in order to her Redress, and that she and *Prestoungrange* have good reason to demand this Redress, appears.

First, because the foresaid Act of Council 1668, was made upon the occasion of a particular case of a young Gentlewomans being carried away without the consent or knowledge of her Friends, and cannot in reason be farther extended, since no man of Sense will think that it was the meaning of the Council, to make themselves absolute Arbiters of all young Gentlewomens Marriages, as the words libelled upon seem to import; But so it is, that *Prestoungrange* did carry away his Lady, with her own, her Mother, and all Friends Consent, Sir *James* only excepted, so that this Act of Council concerns not this case.

2. It is evident, that even the Council did not judge that *Prestoungranges* case did belong to the foresaid Act, otherways they should ( and undoubtedly would ) have fined him in the Equivalent of his Tocher, which we see they have not done. But 3. Whatever is in this Order of Council more than Law allows, could not at that time, nor is at any time binding; but so it is, that all that can be found in *Prestoungranges* case, was a clandestine Marriage, whereof the pain of Law is only 1000 Merks.

3. As to the Councils Order for Sequestration, It is not doubted, but that the Council may in certain Cases Sequester; But then it ought to be upon the hearing of Parties, and certainly, if Parties had been first heard, the Council had not granted this Order: And if the Lady was both surprized and terrified to find her Daughter taken from her, and ordered to a Bishops house, at the desire of Sir *James* her next Heir, and so far contrary to her Daughters Education, and both their Inclinations, it was nothing to be wondred at, but a matter every way excusable, and could not justly be construed a Contempt of the Council



cils Authority, where Sir *James* had proceeded so illegally, and had only Impe-  
trate the Order upon his own Peril.

4. As to what Sir *James* pretended from his Brothers Testament; 1. It is positively affirmed, that the Recommendation in the Testament was insert and interlined, after it was Subscribed. But 2. Whether it was so or not, the Words bear only a Recommendation or Advice, which imports no Obligation, and always leaves a latitude for a more equal Choice. 3. It was a most false Insinuation, That Sir *James* procured the Legacy of 6000 *marks* to be left to the Lady, nor is there the least vestige in the Testament, that that Legacy had the least respect to the foresaid Recommendation. 4. No rational man can doubt, but if the deceased *John Rothead* were alive this day, He would approve his Ladies Choice, and pass from his own Recommendation. And it was notourly known that the Sequestration was contrived by Sir *James*, not in order to a Marriage with his own Son, but he was to dispose of her to another Person on purpose to make his Interest at Court.

5. As to the Ladies marrying her Daughter to *Preston-grange*, it was evident at that time by all that were Impartial, judged to be the more equal Marriage: Sir *James* his Son was three years younger than the Ladies Daughter, and the Daughters Marriage did not happen till near three years after the Fathers Death, in which space, many Grounds of Aversion and Alienation might have fallen in, as in effect they did, which might justly determine both the Mother and the Daughter to make a new Choice, notwithstanding of the Defuncts Recommendation. If the Daughter and Sir *James*'s Son had been both Marriageable when the Father died, the Recommendation might have had more weight, but to think that a Recommendation of Marriage, as to Persons under Age, should be of any moment three years thereafter, against a more equal Choice made by both Mother and Daughter, is contrary both to the Liberty of Marriage, and all Rules of Good Sense.

6. That *Prestoun-Grange* was married by an Outted-Minister, is clearly enough, and *in terminis* Lybelled; And the very Act of Parliament discharging Marriages by Outted Ministers, is one of the Acts lybelled upon: but whether this should have been an Aggravation for so exorbitant a Fyne, all men may judge.

In Respect whereof, it is evident, that the Grounds of the said Fyne were Arbitrary, and the Fyne it self extraordinary and exorbitant, and such as are Condemned by the Claim of Right, and is most justly referred to the Cognition of this Commission.

Sir *James* would willingly decline the Commission, or have the Commission to decline themselves; because this Case seems not to be included in the Act of Parliament, which grants this Commission. But First, if it had been more directly included in that Act, it had not needed an exprels Reference. 2. Its Reference is the same, and every way as Valid as many others made by the Parliament to this Commission, without any formal Vote, and far more Remote from the Subject of the said Act of Parliament. But 3. This Case is clearly comprehended in the Claim of Right; which its well known, was the Rule principally regarded in making the foresaid Act of Parliament; and had the case been then named, it had certainly been expressly Included. 4. In so far as marrying by an Outted-Minister, is made one of the principal Aggravations of this Sentence: it falls directly within the Compass of the said Act of Parliament; and its very like, that at that time the Ladies refusing to put her Daughter in  
the



the Bishops house, and her Daughters marrying by an Outted Minister, were the greatest Ingredients in their Guilt, to procure this heavy Fyne. 5. It is evident, that this Matter cannot be Tryed by any other Court, but by the Parliament; for seing the Fyne was Imposed by Act of Council, and was manifestly exorbitant, and by the Claim of Right, appointed to be Considered and Redressed. It is obvious, that the Parliament are the only proper Judges in this Review. And 6. Since that this Commission is only to Try and Report, *Inverleith* must have a very suspicious Diffidence of his Cause, if he draw back from the Commission, and be unwilling that His Majestie and the Parliament Determine in it.

This Affair being afterwards brought before the said Commission, and Debated in their Presence; the Commission induced, the Parties to submit, and gave forth their Decreet Arbitral: But Sir James having Reclaimed against it, the Lady *Craigleith* did likewise Refile, and so the Decreet took no Effect. Likewise, *John Trotter* now of *Mortounhall*, as representing his Father, who was likewise concerned in that Matter, did not at all submit: and therefore, both he, and the Lady *Craigleith*, and *Prestoun-Grange* for his Interest, do humbly apply to the Committee for Security, as come in place of the foresaid Commission, to have this whole Matter Reported and Determined in Parliament.